IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 8TH AUGUST 2006 / 17TH SRAVANA 1928

ST.Rev..No. 154 of 2006

TA.307/2002 of KERALA STAT,TVM.
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REVISION PETITIONER/APPELLANT:

M/S. KHADER SPINNERS LTD.,
KILIKKOLLOOR, KOLLAM.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENT/RESPONDENT:

STATE OF KERALA, REPRESENTED BY
SECRETARY, TAXES, SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPL. GOVT. PLEADER (SHRI V.V. ASOKAN)

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 08/08/2006, ALONG WITH S.T.REV. NOS. 197, 198, 203, 204, 206, 218 & 235/06, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV.NOS. 154, 197, 198, 203, 204, 206, 218 & 235 OF 2006

Dated this the 8th day of August, 2006

C.R.

JUDGMENT

C. N. Ramachandran Nair, J.

These connected S.T.Revs. arise from a common order of the Sales Tax Appellate Tribunal confirming disallowance of sales tax exemption claimed under Section 5(3) of the CST Act for the assessment years 1987-88 to 1995-96, except 1994-95, in respect of purchase of raw hides and skins for export after dressing it in tannery. Petitioner is engaged in purchase of raw hides and skins from various centres in Kerala and also from other States. The raw hides and skins purchased are transported outside Kerala to Dindigal in Tamil Nadu where the raw hides and skins are processed in the tannery and exported against purchase orders. According to petitioner, the items are mostly exported and, therefore, the entire purchases are entitled to

exemption under Section 5(3) of the CST Act. The question raised and considered before the tribunal is whether there is manufacturing or processing of raw hides and skins to tanned and dressed hides, to disentitle the petitioner to claim exemption under Section 5(3) of the CST Act. The tribunal, following the unreported decision of this Court in T. M. Shajahan v. State of Kerala in ST.Rev. Nos.107, 108, 109, 110, 119 & 122/03, considered only whether there is manufacturing or processing involved in converting raw hides and skins into tanned or dressed product for disentitling exemption under Section 5(3) of the Act. However, on going through assessment in one case, i.e. ST. Rev. 197/06 for the assessment year 1989-90, we find the Assessing Officer in principle accepted the petitioner's eligibility for export exemption under Section 5(3) in respect of raw hides and skins processed and exported, but disallowed exemption because none of the ingredients of Section 5(3) are

satisfied by petitioner. In the detailed order, the Assessing Officer found that exports are not made by petitioner directly and exports are through Agents and in some cases by State Trading Corporation. In fact, the finding of the Officer is that on account of the time-lag between purchases and exports, petitioner could not establish purchases against export orders. Neither foreign buyers' orders, nor bill of lading and details of shipments were produced before the Assessing Officer to establish the ingredients of Section 5(3) of the CST Act. In other words, even if, in principle, the petitioner's case that there is no manufacturing or processing involved in tanning or dressing of the item purchased, i.e. raw hides and the export of it, will qualify for exemption is accepted, still we have no doubt, in our mind, that going by the facts established by the Assessing Officer for the assessment year 1989-90, petitioner has not established it's claim for exemption as

required under Section 5(3) of the CST Act. So far as the other assessment years are concerned, we find the Officer has completely diverted his attention to the question as to whether there is manufacture of new product or not, and having found against the petitioner, the Assessing Officer has not gone into the details of purchases, alleged prior orders for export against which purchases were claimed to have been made, requirement of Form H etc. in respect of each and every purchase in terms of Section 5(3) of the CST Act. However, we are required to consider only the issue decided by the tribunal on merits, no matter, whether it serves only academic purpose and exemption in any case cannot be granted without satisfying the requirement of Section 5(3) with reference to each purchase which was not done.

2. We heard learned counsel for petitioner and the learned Special Government Pleader appearing for the respondent. Counsel for petitioner relied on the decision of the Supreme

Court in Park Leather Industry (P) Ltd. And Another v. State of U.P. And Others ((2001) 9 KTR 250) and contended that the purchase of raw hides and skins qualify for export exemption under Section 5(3), even if it is exported after dressing and tanning, which do not amount to manufacturing. However, we find from the decision of the Supreme Court that it was rendered not in the context of any sales tax exemption claimed on the ground that purchase was against foreign order for export of the same commodity. In fact, the question that was considered by the Supreme Court in the above decision is whether leather retains its basic character even after processing. The Supreme Court held that even after tanning, leather goods retain its description of Hindi word "chamra". It is worthwhile to note that the Supreme Court has observed that in the course of tanning, leather undergoes a change in its physical condition and the item produced is commercially different from raw hide and skin. We are of the view that the observations of the Supreme Court in the Judgment relied on by the petitioner itself are

sufficient to disallow exemption claimed under Section 5(3) because it is a mandatory condition of grant of exemption under Section 5(3) that the purchase order for export should be for export of the very same commodity purchased. Raw hides and skins purchased are highly perishable and raw skins of animals when processed, becomes a commercially different article, namely dressed and tanned hides and skins. Export orders were admittedly for specific dimensions of dressed tanned skin. We cannot even conceive the possibility of petitioner co-relating export orders with the purchase of raw skin and hides of animals in the market depending on availability. This Court in the unreported decision above referred, has referred the decision of the Supreme Court, but still declined exemption holding that the item purchased is not a commodity for export by petitioner. It is worthwhile to note that in the decision in M/s. K.K.S. Khader Mohideen Sahib & Sons v. State of Kerala ((2000) 8 KTR 349 Ker.), this Court has considered the very same issue of exemption under Section 5(3) in the context of Sections 14 and

15 of the CST Act and held that purchase of raw hides and skins for tanning and export of products do not qualify for exemption. In the circumstances and following the above two decisions, we dismiss all the S.T. Rev. Cases.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

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